Testimony of

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Senate Committee on Commerce, Science and Technology

On

Rural Wireless Broadband Issues

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Thank you, Mr. Chairman, for inviting me to testify before you today. I also want to thank all members of the Committee for giving Northpoint the opportunity to appear in support of S. 564, the Emergency Communications and Competition Act.

I. The Northpoint Technology Is Uniquely Suited To Serving Rural Areas

First, I want to applaud you for holding this hearing to highlight how wireless technologies can address the needs of rural populations. Indeed, wireless technologies are ideally suited to address the challenge of serving lightly populated, but geographically large, areas with advanced communications services.

In 1994, Northpoint's founders invented a wireless technology that makes it possible for satellite and terrestrial users to share the same spectrum, at the same time, in the same place. In essence, Northpoint found a way to reuse spectrum that was previously assigned to satellite users on a non-interfering basis. Although much attention has been focused on Northpoint's business plan to provide video and data services in competition with both DBS and cable in the 12.2-12.7 GHz band, this technology can be used in almost any spectrum band currently allocated to satellite use. Northpoint has six patents issued and others pending.

In the DBS band, Northpoint proposes to provide multiple channels of video programming and high-speed broadband service to consumers at low prices: $20 per month for the video package (including all local channels) and $20 for the broadband package. Our locally-deployed systems will have ample capacity to carry all local television channels and other local community programming and provide a robust broadband service. We aim to be a national provider and are committed to provide the same quality of service in all markets, regardless of size.

Too many rural Americans cannot get the same level of service that is offered in urban and suburban communities. Many rural Americans cannot access a cable system, and while DBS does an excellent job of closing the gaps to reach remote households, satellites are woefully deficient in carriage of local television stations and

broadband. In fact, today there are over 1,000 local television stations that are not carried by either EchoStar or DirecTV. DBS does not provide any local channels in 134 markets and no channels in eight entire states. In addition, consumers watching DBS will not get Emergency Alert System warnings in most markets. In contrast, MVDDS will carry these time-sensitive warnings everywhere.

This Committee is also well versed in the limited broadband service that is available to rural America. There is a clear need for new broadband providers in rural areas, and Northpoint's wireless broadband technology is well suited to provide a cost effective solution. Our technology is low cost and easy to deploy. The consumer equipment is also low cost and readily available in the market today. Like Wi-Fi, Northpoint provides a technology-based solution to address consumers' needs.

In all markets, there is a clear need for additional competition in the multichannel video programming distribution and broadband markets. The FCC and the Justice Department have recently documented the absence of competition in the multichannel video industry. Even with two DBS operators and one cable operator, consumers are still paying very high prices for service. With cable rates soaring at a pace three times greater than the rate of inflation, and with broadband access unavailable or too expensive for most families, why are consumers still waiting for the opportunity to use Northpoint's revolutionary technology?

II. The FCC's Licensing System Unfairly Discriminates Against Terrestrial Systems

The FCC licensing process is broken. For decades the U.S. licensing practice was based on the limitations of analog systems and on the erroneous assumption that satellite and terrestrial technologies cannot share the same spectrum. In the past decade, Northpoint has spent millions of dollars proving that our technology can coexist with incumbent and planned satellite services. We also have sought licensing rules that treat terrestrial applicants like us in the same manner as our satellite competitors.

At first, we were stuck in a Catch-22: we had to conduct tests to prove that our technology didn't cause harmful interference to satellites, but the satellite companies strenuously opposed our requests to carry out those tests on the ground that the technology was unproven and the tests were bound to cause interference. We finally received the necessary experimental license in 1997 to test in Kingsville, TX. We conducted two more tests in 1998 and 1999, in Austin, TX and Washington, D.C. There has never been a single DBS customer that has come forward to complain of interference.

In 1998, a subsidiary of the French company Alcatel filed an application seeking a license to operate a non-geostationary satellite orbit (NGSO) system in the DBS band. The FCC also called for other satellite applications but not terrestrial applications. Northpoint recognized that terrestrial operations would be foreclosed if it did not step up and file an application along with the seven satellite applicants in early 1999.

A year later, while the eight applications were pending, Congress enacted the ORBIT Act, a provision of which exempts from auction "spectrum used for the provision of international or global satellite communications services." Congress could not have realized at the time that the FCC would interpret this provision as prohibiting an auction of the NGSO applications but requiring an auction for terrestrial applicants.

In late 2000, based chiefly on Northpoint's extensive experimental record, the FCC determined to create a new Multichannel Video Distribution and Data Service, or MVDDS, that would share the 12.2-12.7 GHz band with satellite operators.

That same year, at the request of the DBS industry, Congress included a provision in the LOCAL TV Act that directed the FCC to retain an independent firm to conduct an independent test of the terrestrial technology proposed by **any** applicant that wanted to share spectrum with DBS satellites. We actually supported the enactment of that law, because it provided that the testing would be done promptly and we were fully confident in our technology.

Northpoint was the only company to submit equipment for that statutorily mandated test in early 2001. The MITRE Corporation, which conducted the test, concluded that satellite-terrestrial spectrum sharing is indeed feasible. Subsequently, the FCC adopted technical rules based on the Northpoint technology, citing the MITRE testing.

On April 29, 2003, the FCC reaffirmed its prior decisions that MVDDS and DBS can share the same spectrum. The eight year effort to prove our technology to the FCC has succeeded.

The licensing process is still not complete, however.

Let me note for the record that Northpoint does not oppose spectrum auctions in general. In ordinary circumstances, where you have more applicants than spectrum available, auctions can be a legitimate and efficient means to distribute spectrum licenses.

But auctions in the context of this proceeding are not appropriate.

First, Section 309(j) of the Communications Act requires auctions only in those cases where "the Commission accepts mutually exclusive applications."

In the FCC proceeding involving the Northpoint and NGSO systems, Northpoint and seven other satellite applicants filed applications on the same day for the same spectrum. The FCC subsequently concluded that all eight can share that spectrum with each other and with the two incumbent DBS operators. As a preliminary matter, there is no mutual exclusivity and thus no basis for an auction under the statute.

Some would wonder, why then is there an auction? Well the key words in the statute are "accept for filing". The FCC never accepted the Northpoint applications, but it did accept the seven satellite applications. Why the difference in treatment? The FCC has different rules for processing satellite versus terrestrial applications. Satellite applications are called for ***during*** the rulemaking process, thereby giving the applicants an opportunity to resolve mutual exclusivity. Terrestrial applications are called for ***after*** the rulemaking and the terrestrial applicants are not afforded the same opportunity.

This institutional difference in treatment had never caused any particular problem before, because until Northpoint came along, satellite and terrestrial operators were never attempting to use the same spectrum resource at the same time.

Now, however, the competitive disadvantage this causes terrestrial applicants is obvious. Terrestrial companies will be subjected to costs not borne by their satellite competitors. The regulatory status quo favors one technology over another. Consumers should be the ones who determine the technology that best serves their needs, not government. We are thankful that Senators Landrieu and Sununu introduced legislation to end this blatant inequality. And we thank all the members of the Committee who have cosponsored this measure.

III. Northpoint Is Not Seeking Special Treatment; It Is Seeking A Level Regulatory Playing Field For All Terrestrial Applicants

A constant refrain we hear from our opponents is that Northpoint ought to be willing to pay for the spectrum. The issue is that the rules changed in the middle of the game: our competitors were exempted from an auction after the applications were filed.

I've already mentioned the satellite applicants with whom we applied on the same day for the same spectrum, and who will be getting their licenses without an auction. These companies include Hughes (DirecTV's parent), Boeing, Alcatel and others. These multi-billion dollar companies were given a huge competitive advantage that was not afforded terrestrial applicants. The ultimate result is it will cost consumers more for our service if we are forced into an auction.

Indeed, Hughes has never participated in a spectrum auction. This year EchoStar teamed up with a foreign satellite company that has a full-CONUS slot, to get even more auction-free spectrum capacity to serve its U.S. subscribers. And Canadian satellites have now been authorized to serve the U.S. market, also without auction.

In 2001, the FCC awarded nationwide auction-free licenses in the DBS Expansion Band to eleven companies, including Hughes and Pegasus. They will be our direct competitors.

I do not mention these facts in an effort to fault the satellite companies for getting the licenses in the manner they did. But I do take grave exception to their efforts to deprive us from getting the same treatment. We do not seek to be licensed on terms more favorable than satellite companies; we seek merely to be licensed on the ***same*** terms.

The FCC's Flexibility Order allows mobile satellite system operators to use their satellite licenses to operate an ancillary terrestrial system. The FCC expressly rejected calls to conduct an auction for the terrestrial use of this satellite spectrum. This presents a striking contrast to the MVDDS auction.

Some might note that there is a DBS auction scheduled for August of this year. We do not believe that the auction can legally go forward, given that the FCC concluded several years ago that DBS is an international satellite service, and thus should come within the ORBIT Act prohibition on auctions of orbital locations or spectrum used for the provision of international or global satellite services. Moreover, the particular DBS slots that are up for auction are, with one exception, the "rejects" of the incumbent DBS operators and they are all "wing" slots which are incapable of serving the entire continental United States.

Finally, I would note that the cable industry has received tens of thousands of licenses from the FCC, including numerous licenses granted this very year, none of which were purchased in auction. Again, I am not faulting the cable industry, just noting a fact: It costs the cable industry less to do business with the federal government than it would cost us. Yet we are expected to be a price competitor with cable.

In closing, I think it may be useful to contrast our regulatory efforts to those of the Wi-Fi industry. Here is a technology that burst onto the scene in just the last couple of years, and it is by all accounts flourishing. Recent reports estimate that by 2007, Wi-Fi in the U.S. and Europe will generate revenue of $5.5 billion. Policymakers often cite Wi-Fi's success as evidence of what happens when government regulation is no barrier to entry or innovation. Wi-Fi users do not pay

the government for the spectrum they use, nor do they face regulatory delays.

Terrestrial MVDDS should play on a level playing field with satellite competitors who utilize the very same spectrum. S. 564 achieves that goal while at the same time ensuring that all consumers, rural and urban, will have access to local television stations, emergency information, public interest programming, and broadband service.

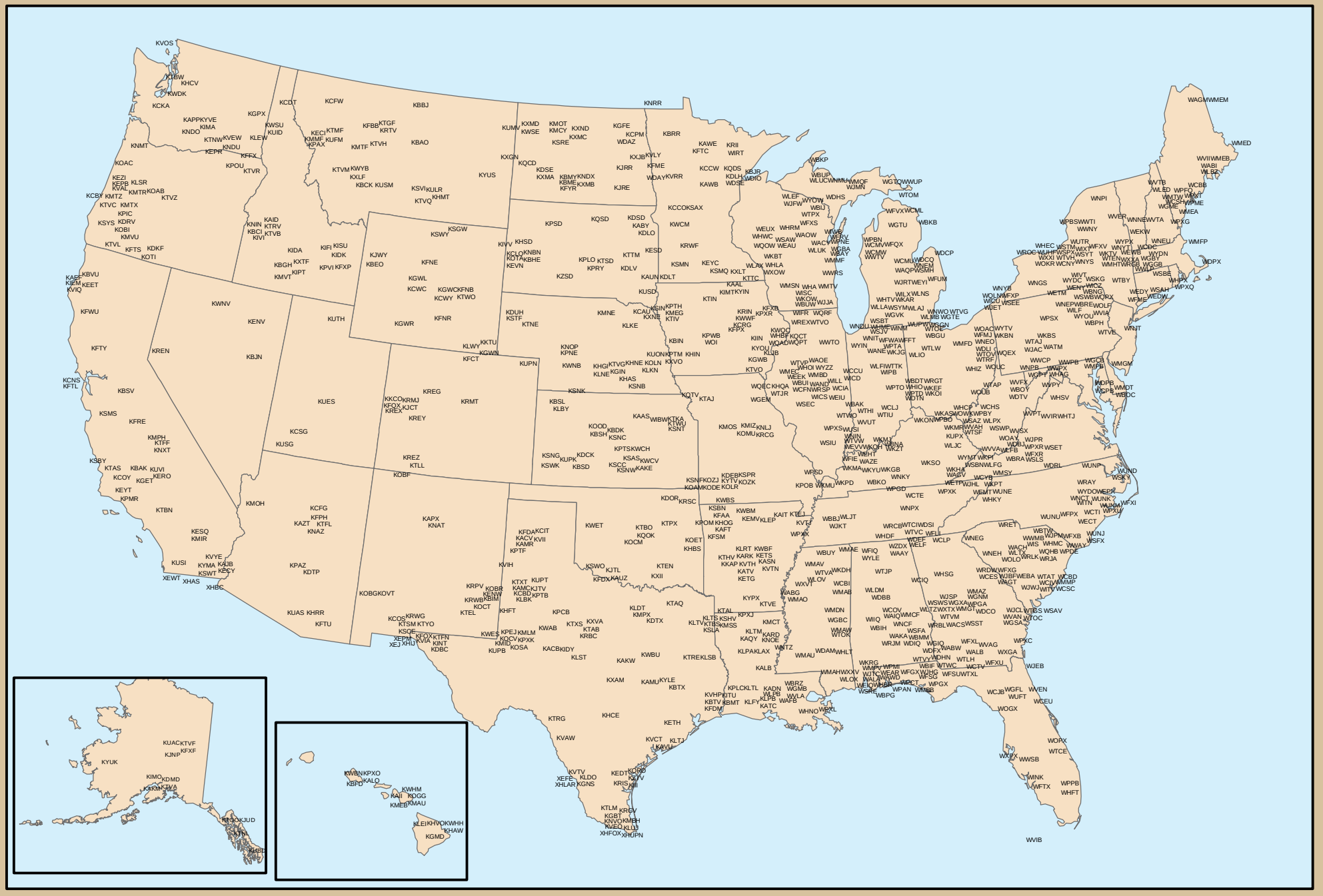
If we're privileged to be licensed, I can assure you that we will deploy MVDDS across the entire United States, including Alaska and Hawaii, within two years. Moreover, our service will be affordable.

We are not opposed to the licensing of other MVDDS operators who can share the spectrum with us. Any company that can demonstrate its own technology through independent testing, pursuant to the LOCAL TV Act and S. 564, should be eligible for an MVDDS license.

S. 564 will ensure that all terrestrial and satellite operators will be licensed in a like manner. Implementation of this principle will jumpstart the successful deployment of MVDDS, enabling consumers – urban, suburban ***and*** rural – to receive the benefits of an innovative new service and lower prices!

Thank you again for allowing me to testify. I would be pleased to answer any questions you might have.

Local TV Stations Not Carried by EchoStar or DirecTV



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